

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMAR WILSON,)	
)	2:15cv1295
Plaintiff,)	Electronic Filing
)	
v.)	District Judge David S. Cercone
)	Magistrate Judge Lisa Pupo Lenihan
BYANAHAK JIN, MIA HI PARK,)	
SERGEANT MILLER, SERGEANT)	
MEDVEC, NEDRA GREGO, NURSE)	
EARL BLAKER, CAPTAIN)	
MITCHELL, IRMA VIHLLIDAL,)	
MEDICAL VENDOR WEXFORD,)	
)	
Defendants.)	
)	

MEMORANDUM ORDER

Plaintiff Jamar Wilson ("Plaintiff") initiated this case on October 5, 2015 by submitting for filing a Motion for Leave to Proceed *in forma pauperis* ("IFP"), along with a Complaint, which he filed pursuant to 42 U.S.C. § 1983. (ECF No. 1.) In accordance with the Magistrate Judge's Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules of Court, all pretrial matters were referred to United States Magistrate Judge Lisa Pupo Lenihan.

Plaintiff's initial IFP Motion was denied by Court Order dated October 6, 2015, (ECF No. 2), but his second IFP Motion, (ECF No. 3), was granted by the Court on November 3, 2015, (ECF No. 5). His Complaint was docketed on November 3, 2015. (ECF No. 6.)

Following discovery, Motions for Summary Judgment were filed on behalf of Commonwealth Defendants Miller, Medvec, Grego, Vihlidal, and Mitchell, (ECF No. 41), and Medical Defendants Doctors Jin and Park, (ECF No. 48), to which Plaintiff responded in opposition, (ECF Nos. 81-87). On November 14, 2016, the Magistrate Judge issued a Report

and Recommendation, recommending that both Motions for Summary Judgment be granted. (ECF No. 93.) The parties were informed that written objections to the Report and Recommendation were due by December 1, 2016, but after Plaintiff twice requested the Court to extend the deadline, (ECF Nos. 95, 101), the deadline was moved to January 20, 2017, (ECF No. 103). While Plaintiff's Objections were docketed on January 25, 2017, they are postmarked January 20, 2017, and are therefore considered timely pursuant to the mailbox rule.¹

Where, as here, objections have been filed, the court is required to make a *de novo* determination about those portions of the Report and Recommendation to which objections were made. *See* 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The district court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions.

After reviewing the record *de novo*, including the pleadings and documents in this case, together with the Report and Recommendation, and Plaintiff's Objections thereto, the Court is in agreement with the ultimate recommendation of the Magistrate Judge. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation dated November 14, 2016, (ECF No. 93), is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by Defendants Grego, Medvec, Miller, Mitchell and Vihlidal (ECF No. 41) is **GRANTED**.

¹ This is the filing date under the "mailbox rule." Pennsylvania and federal courts employ the prisoner mailbox rule. *See Perry v. Diguglielmo*, 169 F. App'x 134, 136 n.3 (3d Cir. 2006) (citing *Commonwealth v. Little*, 716 A.2d 1287 (Pa. Super. Ct. 1998)); *Burns v. Morton*, 134 F.3d 109, 113 (3d Cir. 1998). Under this doctrine, a prisoner's *pro se* pleading is deemed filed when delivered to prison officials for mailing. *See Burns*, 134 F.3d at 113; *Commonwealth v. Castro*, 766 A.2d 1283, 1287 (Pa. Super. Ct. 2001) (deemed filed when given to proper prison authority or placed in a prison mailbox).

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by Defendants Drs. Jin and Park (ECF No. 48) is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

Date: 2/23/17



David Stewart Cercone
United States District Judge

cc: Jamar Wilson
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